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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Speedway Motorsports, Inc.

Serial No. 75/160,194

Second Request for Reconsideration

Warren G. Olsen of Fitzpatrick, Cella & Scinto for Speedway Motors, Inc.

Cathleen Pace Cain, Trademark Examining Attorney, Law Office 104 (Sidney Moskowitz, Managing Attorney).

Before Cissel, Chapman and Drost, Administrative Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

The Board affirmed the refusal to register under Section 2(e)(1) of the Act on January 30, 2003.

Applicant's first request for reconsideration, filed February 28, 2003, was denied by the Board order dated June 4, 2003. On July 2, 2003, applicant filed a second request for reconsideration.

Applicant again alleges that the Board mischaracterized applicant's November 16, 2000 amendment. As we noted in both our original opinion and our ruling on the first request for reconsideration, the amendment was made at applicant's direction. It was not contingent upon acceptance by the Examining Attorney, and even if that had been the case, the action of the Examining Attorney following applicant's amendment is consistent with the acceptance of it.

The second point raised in applicant's second request for reconsideration was also argued and rejected by the Board in both our original opinion and our ruling on applicant's first request for reconsideration. While consistent action throughout the agency is an acknowledged goal, the Board is not bound by the actions of individual examining attorneys in passing other applications to publication. Our task is to resolve the appeals before us on their merits as presented by their records, and this we have done. Stated another way, that third-party applications may appear to have been treated differently by other examining attorneys from the way in which the application before us in this appeal has been treated by the examining attorney is not binding on the Board.

The third point argued in applicant's second request for reconsideration again relates to the question of applicant's amendment deleting eight classes of goods. As noted above, that issue was discussed in our original opinion, and then discussed again in response to applicant's first reconsideration request. We have twice explained our ruling in this regard, and we decline to do so again.

Applicant has revealed no error in the Board's previous two rulings in this matter. Accordingly, applicant's request (p.5) that we "take up the amended appeal on the eight additional classes" is denied.